

ESTATE OF FRANCIS OR
FRANK DEMARRIAS
(Deceased Sisseton-Wahpeton Sioux
ALLOTTEE No. SW-381-757)

IBIA 75-34

Decided January 3, 1975

Petition to reopen.

Docketed, Petition Granted and Order Approving Will Modified in Part.

Indian Probate: Reopening: Waiver of Time Limitation

A petition to reopen filed more than three years after the final determination of heirs will be granted when there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

APPEARANCES: None

OPINION BY ADMINISTRATIVE JUDGE SABAGH

On May 6, 1974, the Board, in a collateral action, granted the petition to reopen the Estate of Mamie Sarah DeMarrias Lee Salo (IBIA 74-41) and the Order Determining Heirs was modified in part to delete her alleged daughter, Rondella Ruth Lee, as an heir.

Mamie Sarah DeMarrias was the daughter of the decedent, Francis or Frank DeMarrias. In the Order Approving Will in the decedent's estate dated June 23, 1969, it was determined that Mamie Sarah DeMarrias predeceased her father but was survived by a daughter, Rondella Ruth Lee.

Based upon evidence of record supported by testimony adduced at a hearing held on November 13, 1974, by Administrative Law Judge Vernon J. Rausch, it was concluded that Rondella Ruth Lee either predeceased her mother or was non-existent. It was recommended by Judge Rausch that this matter be reopened and the Order Approving

Will dated June 23, 1969, be modified by deleting Rondella Ruth Lee as an heir at law and reapportioning her share among the other heirs at law. A recommended order was forwarded to the Board on December 9, 1974.

After full and careful consideration of the complete record and Judge Rausch's recommendation, the Board concurs in the findings and conclusions of the Judge and adopts the recommendation of the Administrative Law Judge as its own.

A finding is made that this estate should be reopened for the sole purpose of modifying and correcting the Order Approving Will, dated June 23, 1969, as follows: (1) to delete Rondella Ruth Lee as an heir therein and (2) to reapportion her share among the heirs at law.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the estate of Francis or Frank DeMarrias, IS HEREBY REOPENED and the Order Approving Will issued June 23, 1969, IS HEREBY AMENDED, CORRECTED AND MODIFIED to delete Rondella Ruth Lee as an heir and to reapportion her share as follows, to wit:

Leon DeMarrias, SWTJ-596, son,	1/6 or 270/1620
Rebecca DeMarrias Williams, SW-G-2707, daughter	1/6 or 270/1620
Joe Kenneth Adams, SWU-20, maternal grandson,	1/12 or 135/1620
Francis C. Adams, SWU-18, maternal grandson, (children of decedent's prior deceased daughter, Frances DeMarrias),	1/12 or 135/1620
LaVoye DeCoteau, SWU-2508, maternal grandson,	1/30 or 54/1620
Ramona DeCoteau Washington, SWU-2507, maternal granddaughter,	1/30 or 54/1620
Celestine Thompson Ducheneaux, SWU-2503, maternal granddaughter,	1/30 or 54/1620
Michael Thompson, SWU-2509, maternal grandson,	1/30 or 54/1620
Hugo Thompson, SWU-2509, maternal grandson, (children of decedent's prior deceased daughter Violet DeMarrias),	1/30 or 54/1620
Russell Adams, SWU-24, maternal grandson,	1/54 or 30/1620
Richard Adams, SWU-28, maternal grandson,	1/54 or 30/1620
Dale Henry Adams, SWU-2869, maternal grandson,	1/54 or 30/1620
Clayton F. Adams, SW-N89982, maternal grandson,	1/54 or 30/1620
Roger Patrick Adams, SW-N89983, maternal grandson,	1/54 or 30/1620
Delwin J. Adam, SW-N89984, maternal grandson,	1/54 or 30/1620
Sandra Adams, SW-N89985, maternal granddaughter,	1/54 or 30/1620

Velma June DeMarrias Renville, SWU-26, maternal granddaughter, (children of decedent's prior deceased daughter, Virginia DeMarrias),	1/54 or 30/1620
Glenda Joyce DeMarrias, NE, paternal great-granddaughter, LaVerne Earl DeMarrias, NE, paternal great-grandson, Shawn DeMarrias, NTE, paternal great-grandson, (grandchildren of Virginia DeMarrias, SWU-24, being children of Laverne DeMarrias, SWU-27, prior deceased son of Virginia DeMarrias),	1/162 or 10/1620 1/162 or 10/1620 1/162 or 10/1620
Lloyd DeMarrias, SWU-575, paternal grandson, Sanford DeMarrias, SUTU-574, paternal grandson, (children of decedent's prior deceased son, Henry or Alfred DeMarrias),	1/12 or 135/1620 1/12 or 135/1620

and except as herein modified, the Order Approving Will of June 23, 1969, is and shall be unchanged and is final as of that date.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

David J. McKee
Chief Administrative Judge